

REMARKS

Claims 1-33 remain pending in the application.

Claims 1-7, 12-21 and 26-29 over Lechleider in view of Bellenger

In the Office Action, claims 1-7, 12-21 and 26-29 were rejected under 35 U.S.C. §103(a) as allegedly being obvious over Lechleider, U.S. Patent No. 6,091,713 ("Lechleider") in view of Bellenger et al., U.S. Patent No. 6,058,110 ("Bellenger"). The Applicants respectfully traverse the rejection.

The Examiner acknowledges in the Advisory Action that Bellenger's modem is able to transmit in both voice band and DSL band, allegedly equating to the claimed combination analog/DSL modem (Advisory Action, page 3). To more clearly distinguish the claims over the cited prior art the Applicants herein amended claims 1-7, 12-21 and 26-29 to recite a combination analog/DSL modem that supports DSL service to a subscriber.

Lechleider appears to disclose a method and system using voiceband transmission characteristics of modems to estimate the viability of deploying broadband services over a subscriber loop in a public switched telephone network (col. 5, line 43-col. 6, line 7).

The Office Action relies on Bellenger to allegedly make up for the deficiencies in Lechleider to allegedly arrive at the claimed invention. The Applicants respectfully disagree.

Bellenger's dual band modem operates at DSL frequencies (Abstract). However, even when the dual band modem operates at DSL frequencies, the dual band modem is unable to support DSL service since Bellenger discloses the modem allows a choice of operating at a higher data rate without the cost of an ADSL modem (Bellenger, col. 3, lines 1-8). Thus, Bellenger's dual band modem is unable to support DSL service to a subscriber, as recited by claims 1-7, 12-21 and 26-29.

Thus, even if it were theoretically obvious to modify Lechleider with Bellenger (which it was not), the result would be a method and system using a combination voice band and DSL band modem to estimate the viability of deploying broadband services over a subscriber loop in a public switched

telephone network. Lechleider modified by Bellenger's combination modem that **lacks** the capability to support DSL service to a subscriber would **NOT** result in a combination analog/DSL modem that supports DSL service to a subscriber, as recited by claims 1-7, 12-21 and 26-29.

Moreover, Lechleider system modified by Bellenger's modem would still require the combination modem that lacks the capability to support DSL service to be replaced with a modem that allows a customer to receive DSL service. The theoretical combination of Lechleider and Bellenger would result in a system similar to Lechleider's that would **still require** replacing the combination modem for one that would support DSL service, as recited by claims 1-7, 12-21 and 26-29.

Moreover, even if Bellenger disclosed a combination analog/DSL modem, which as discussed above Bellenger fails to do, "Teachings of references can be combined only if there is some suggestion or incentive to do so." In re Fine, 5 USPQ2d 1596,1600 (Fed. Cir. 1988) (quoting ACS Hosp. Sys. v. Montefiore Hosp., 221 USPQ 929, 933 (Fed. Cir. 1984)) (emphasis in original). Nothing in Lechleider and Bellenger, nor any of the cited prior art, suggests replacing Lechleider analog modem with **anything**, much less a combination analog/DSL modem that supports DSL service to a subscriber, as recited by claims 1-7, 12-21 and 26-29.

Neither Lechleider nor Bellenger, either alone or in combination, discloses, teaches or suggests a combination analog/DSL modem that supports DSL service to a subscriber, as recited by claims 1-7, 12-21 and 26-29.

A benefit of a combination analog/DSL modem is, e.g., testing of a DSL line after DSL service is initiated. If DSL service becomes interrupted after service is initiated, the prior art requires detaching a DSL modem and attaching an analog modem to test a service line. Use of a combination analog/DSL modem would simply require a user to initiate the analog portion to test a service line and report any faults. Once DSL service is restored, the DSL portion is once again initiated to restore DSL service without having to disconnect a modem and reconnect another. The cited prior art fails to disclose or suggest such a benefit.

Accordingly, for at least all the above reasons, claims 1-7, 12-21 and 26-29 are patentable over the prior art of record. It is therefore respectfully requested that the rejection be withdrawn.

Claims 8-11, 22-25 and 30-33 over Lechleider in view of Bellenger and Vogt

In the Office Action, claims 8-11, 22-25 and 30-33 were rejected under 35 U.S.C. §103(a) as allegedly being obvious over Lechleider in view of Bellenger, and further in view of Vogt, III et al., U.S. Patent No. 5,625,667 ("Vogt"). The Applicants respectfully traverse the rejection.

Claims 8-11, 22-25 and 30-33 are dependent on claims 1, 16 and 27 respectively, and are allowable for at least the same reasons as claims 1, 16 and 27.

Claims 8-11 recite a combination analog/DSL modem that supports DSL service to a subscriber.

As discussed above, neither Lechleider nor Bellenger, either alone or in combination, discloses, teaches or suggests a combination analog/DSL modem that supports DSL service to a subscriber, as recited by claims 8-11, 22-25 and 30-33.

The Office Action relies on Vogt to allegedly make up for the deficiencies in Lechleider and Bellenger to arrive at the claimed invention. The Applicants respectfully disagree.

Vogt appears to disclose a method of measuring characteristics such as resistance, capacitance and foreign voltage on a telephone line (Abstract). A steady state voltage is sampled a number of times to determine the resistance, capacitance and foreign voltage on the telephone line (Vogt, col. 4, lines 3-16).

Although Vogt discloses testing a telephone line for operating characteristics, Vogt fails to disclose or suggest a combination analog/DSL modem that supports DSL service to a subscriber to perform such tests, as recited by claims 8-11, 22-25 and 30-33.

Neither Lechleider, Bellenger nor Vogt, either alone or in combination, fails to disclose, teach or suggest a combination analog/DSL modem that supports DSL service to a subscriber, as recited by claims 8-11, 22-25 and 30-33.

Accordingly, for at least all the above reasons, claims 8-11, 22-25 and 30-33 are patentable over the prior art of record. It is therefore respectfully requested that the rejection be withdrawn.

Conclusion

All objections and rejections having been addressed, it is respectfully submitted that the subject application is in condition for allowance and a Notice to that effect is earnestly solicited.

Respectfully submitted,
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